



State of Wisconsin
2009 - 2010 LEGISLATURE

Wed a.m. (2/17/11) if possible

LRB-4094/PZ³
RCT&RNK:kjf:md

VMF

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

↓ please regenerate

1 AN ACT *to repeal* 16.968 and 281.34 (9); *to renumber* 160.50 (2); *to renumber*
2 *and amend* 20.865 (2) (em); *to amend* 20.370 (6) (eg), 281.34 (1) (f), 281.34 (4)
3 (a) 2., 281.34 (4) (a) 3., 281.34 (5) (b) 1., 281.34 (5) (c), 281.34 (5) (d), 281.344 (4s)
4 (dm), 281.346 (4s) (dm) and 281.348 (3) (cm); and *to create* 160.50 (2) (b),
5 281.34 (1) (eg), 281.34 (1) (er), 281.34 (4) (a) 4., 281.34 (4) (am), 281.34 (5) (de),
6 281.34 (11), 281.341 and 281.346 (8) (cm) of the statutes; **relating to:**
7 groundwater management, water conservation, and granting rule-making
8 authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

9 SECTION 1. 16.968 of the statutes is repealed.

10 SECTION 2. 20.370 (6) (eg) of the statutes is amended to read:

SECTION 2

1 20.370 (6) (eg) *Groundwater mitigation and local assistance*. All moneys
2 received under s. 281.34 not appropriated under sub. (4) (cg) or (ch) for mitigation
3 under s. 281.34 (8) (d) ~~and (9) (d) and funding to local governmental units under s.~~
4 ~~281.34 (9) (b).~~

5 **SECTION 3.** 20.865 (2) (em) of the statutes is renumbered 20.285 (1) (et) and
6 amended to read:

7 20.285 (1) (et) *Groundwater survey and analysis*. The amounts in the schedule
8 for the survey and analysis of groundwater conditions and problems under ss. s.
9 ~~16.968, 36.25 (6) and 280.13 and subch. II of ch. 281.~~

10 **SECTION 4.** 160.50 (2) of the statutes is renumbered 160.50 (2) (a).

11 **SECTION 5.** 160.50 (2) (b) of the statutes is created to read:

12 160.50 (2) (b) The groundwater coordinating council shall create a
13 subcommittee on groundwater area review. The subcommittee shall be composed of
14 individuals with technical expertise in the area of groundwater management,
15 including professional hydrologists.

16 **SECTION 6.** 281.34 (1) (eg) of the statutes is created to read:

17 281.34 (1) (eg) "Qualifying spring" means the following:

18 1. Before the department submits the report under sub. (11) (b), a spring that
19 results in a flow of at least one cubic foot per second at least 80 percent of the time.

20 2. Beginning on the day that the department submits the report under sub. (11)
21 (b), a spring that results in a flow of at least 0.25 cubic foot per second and that is
22 perennial, as defined under sub. (11) (c).

23 **SECTION 7.** 281.34 (1) (er) of the statutes is created to read:

24 281.34 (1) (er) "Significant adverse environmental impact" means alteration
25 of groundwater levels, groundwater discharge, surface water levels, surface water

Insert
2-15
MOK

1 discharge, groundwater temperature, surface water temperature, groundwater
2 chemistry, surface water chemistry, or other factors to the extent that those
3 alterations cause significant degradation of environmental quality, including
4 biological and ecological aspects of the affected water resource.

5 **SECTION 8.** 281.34 (1) (f) of the statutes is amended to read:

6 281.34 (1) (f) "Spring" means an area of concentrated groundwater discharge
7 occurring at the surface of the land ~~that results in a flow of at least one cubic foot per~~
8 ~~second at least 80 percent of the time.~~

9 **SECTION 9.** 281.34 (4) (a) 2. of the statutes is amended to read:

10 281.34 (4) (a) 2. A high capacity well with a water loss of more than 95 percent
11 of the amount of water withdrawn or a high capacity well for a water bottling facility.

12 **SECTION 10.** 281.34 (4) (a) 3. of the statutes is amended to read:

13 281.34 (4) (a) 3. A high capacity well that may have a significant adverse
14 environmental impact on a qualifying spring.

15 **SECTION 11.** 281.34 (4) (a) 4. of the statutes is created to read:

16 281.34 (4) (a) 4. A high capacity well not described in subds. 1. to 3. if the
17 department receives a petition under par. (am) 2. requesting environmental review
18 of the application and the information in the petition shows that construction and
19 operation of the well as proposed is reasonably probable to result in significant
20 adverse environmental impact to surface waters.

21 **SECTION 12.** 281.34 (4) (am) of the statutes is created to read:

22 281.34 (4) (am) 1. When the department receives an application for approval
23 of a high capacity well that is not described in par. (a) 1. to 3., the department shall
24 require the applicant to provide notice of the application to interested members of
25 the public.

****NOTE: Should DNR, rather than the applicant, provide the public notice?
Should there be any limit on the wells to which this applies?

2. Any person may file a petition with the department requesting environmental review of a well to which subd. 1. applies on the grounds that the well is reasonably probable to result in significant adverse environmental impact to surface waters. A person filing a petition under this subdivision shall include in the petition information showing that construction and operation of the well as proposed is reasonably probable to result in significant adverse environmental impact to surface waters.

SECTION 13. 281.34 (5) (b) 1. of the statutes is amended to read:

281.34 (5) (b) 1. Except as provided in subd. 2., if the department determines, under the environmental review process in sub. (4), that an environmental impact report under s. 23.11 (5) must be prepared for a proposed high capacity well located in a groundwater protection area, the department may not approve the high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that ensure that the high capacity well does not cause significant adverse environmental impact.

SECTION 14. 281.34 (5) (c) of the statutes is amended to read:

281.34 (5) (c) *High water loss.* If the department determines, under the environmental review process in sub. (4), that an environmental impact report under s. 23.11 (5) must be prepared for a proposed high capacity well with a water loss of more than 95 percent of the amount of water withdrawn or for a high capacity well for a water bottling facility, the department may not approve the high capacity well unless it is able to include and includes in the approval conditions, which may include

1 conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that
2 ensure that the high capacity well does not cause significant adverse environmental
3 impact.

4 **SECTION 15.** 281.34 (5) (d) of the statutes is amended to read:

5 281.34 (5) (d) *Impact on a qualifying spring.* 1. Except as provided in subd.
6 2., if the department determines, under the environmental review process in sub. (4),
7 that an environmental impact report under s. 23.11 (5) must be prepared for a
8 proposed high capacity well that may have a significant adverse environmental
9 impact on a qualifying spring, the department may not approve the high capacity
10 well unless it is able to include and includes in the approval conditions, which may
11 include conditions as to location, depth, pumping capacity, rate of flow, and ultimate
12 use, that ensure that the high capacity well does not cause significant adverse
13 environmental impact.

14 2. Subdivision 1. does not apply to a proposed high capacity well that may have
15 a significant adverse environmental impact on a qualifying spring and that is a water
16 supply for a public utility engaged in supplying water to or for the public, if the
17 department determines that there is no other reasonable alternative location for a
18 well and is able to include and includes in the approval conditions, which may include
19 conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that
20 ensure that the environmental impact of the well is balanced by the public benefit
21 of the well related to public health and safety.

22 **SECTION 16.** 281.34 (5) (de) of the statutes is created to read:

23 281.34 (5) (de) *High capacity wells reasonably probable to cause significant*
24 *adverse environmental impact.* 1. Except as provided in subd. 2., if the department
25 determines, under the environmental review process in sub. (4), that an

1 environmental impact report under s. 23.11 (5) must be prepared for a proposed high
2 capacity well to which sub. (4) (a) 4. applies, the department may not approve the
3 high capacity well unless it is able to include and includes in the approval conditions,
4 which may include conditions as to location, depth, pumping capacity, rate of flow,
5 and ultimate use, that ensure that the high capacity well does not cause significant
6 adverse environmental impact to surface waters.

7 2. Subdivision 1. does not apply to a proposed high capacity well to which sub.
8 (4) (a) 4. applies that is a water supply for a public utility engaged in supplying water
9 to or for the public, if the department determines that there is no other reasonable
10 alternative location for a well and is able to include and includes in the approval
11 conditions, which may include conditions as to location, depth, pumping capacity,
12 rate of flow, and ultimate use, that ensure that the environmental impact of the well
13 is balanced by the public benefit of the well related to public health and safety.

Insert 6-13 → **SECTION 17.** 281.34 (9) of the statutes is repealed. two

X ****NOTE: The repeal of this provision, and the treatment of provisions containing cross-references to this provision elsewhere in the draft, should have a delayed effective date given that it will take some time for the (2) groundwater management areas designated under current law to be reviewed by the groundwater coordinating council under the procedures created in this draft.

15 **SECTION 18.** 281.34 (11) of the statutes is created to read:

16 281.34 (11) SPRINGS; INVENTORY AND RULE. (a) The department shall conduct
17 an inventory of large springs in this state. The department shall complete the
18 inventory no later than the first day of the 37th month beginning after the effective
19 date of this paragraph [LRB inserts date].

****NOTE: Should the draft give more guidance on which springs must be inventoried?

(b) The department shall submit a report to the legislature, under s. 13.172 (2), and to the legislative reference bureau when it completes the inventory under par. (a).

(c) The department shall promulgate a rule defining "perennial" for the purposes of this section.

SECTION 19. 281.341 of the statutes is created to read:

281.341 Groundwater management and attention areas. (1)

DEFINITIONS. In this section:

(a) "Aquitard" means a geologic formation having low permeability.

(b) "Baseflow" means the sustained flow of a stream, principally by groundwater discharge, in the absence of direct runoff.

Insert →
7-11 (c) "Confined aquifer" means a water bearing geologic formation bounded on its upper surface by an aquitard.

(d) "Council" means the groundwater coordinating council.

(e) "Council subcommittee" means the groundwater area review subcommittee of the groundwater coordinating council.

(f) "Potentiometric surface" has the meaning given in s. 281.34 (1) (e).

(g) "Target withdrawal quantity" means the amount of water that may be withdrawn from a hydrologic system without impairing the critical environmental functions of the hydrologic system.

(h) "Unconfined aquifer" means a water bearing geologic formation that is not bounded on its upper surface by an aquitard.

(2) GROUNDWATER MANAGEMENT AREA DESIGNATION. (a) The department may, by rule, designate an area as a groundwater management area if the council forwards

1 a conclusion to the department under par. (e) that the area qualifies for designation
2 as a groundwater management area.

***NOTE: Did you intend for the department's authority to be discretionary? If so, should the draft specify the bases on which the department could decline to designate a qualifying area as a groundwater management area?

3 (b) An area with a confined aquifer qualifies for designation as a groundwater
4 management area if any of the following applies:

5 1. The groundwater potentiometric surface of the confined aquifer has been
6 reduced 150 feet or more from the level at which the potentiometric surface would
7 be if no groundwater had been pumped from the area.

8 2. The groundwater potentiometric surface of the confined aquifer has been
9 reduced to within 20 feet above the top of the aquitard bounding the upper surface
10 of the confined aquifer.

11 3. The water level of the confined aquifer is declining at a rate exceeding 5 feet
12 per year averaged over a 10-year period, as determined by data from long-term
13 monitoring wells.

***NOTE: What constitutes a "long-term monitoring well"? Is the reference to these wells necessary? If so, the draft should provide more detail on this issue. For example, how long is "long-term"? Long enough to generate statistically reliable data?

14 4. The withdrawal of groundwater in the area has caused a violation of one or
15 more drinking water standards promulgated by the department under ss. 280.11 and
16 281.17 (8).

***NOTE: This provision assumes that the water quality standards referred to in the instructions are drinking water standards promulgated under the referenced statutes.

17 (c) An area with an unconfined aquifer qualifies for designation as a
18 groundwater management area if any of the following applies:

1 1. The baseflow of the streams in the area has declined more than 10 percent
2 from what the baseflow of the streams would be if no groundwater had been pumped
3 from the area.

4 2. The water level of the unconfined aquifer is declining at a rate exceeding 5
5 feet per year averaged over a 10-year period, as determined by data from long-term
6 monitoring wells.

 ****NOTE: See the previous note about long-term monitoring wells.

7 3. The withdrawal of groundwater in the area has caused a decline in the water
8 table of one foot or more beneath, or adjacent to, lakes or wetlands in the area, as
9 determined by use of groundwater flow modeling.

10 4. The withdrawal of groundwater in the area has caused a violation of one or
11 more drinking water standards promulgated by the department under ss. 280.11 and
12 281.17 (8).

13 (d) The council subcommittee shall meet regularly to examine areas that may
14 qualify for designation as groundwater management areas under this subsection
15 and shall forward its conclusions to the council. The council subcommittee's
16 conclusions shall include a delineation of the geographic boundaries of the areas
17 examined. Before examining any other area, the council subcommittee shall
18 examine the 2 groundwater management areas designated under s. 281.34 (9), 2007
19 stats., to determine whether they qualify for designation as groundwater
20 management areas under this subsection and shall forward the council
21 subcommittee's conclusion to the council.

22 (e) If the council subcommittee forwards a conclusion to the council under par.
23 (d) that an area qualifies as a groundwater management area and if the council
24 concurs with that conclusion, the council may recommend that the department

1 designate the area as a groundwater management area. The council's
2 recommendation under this paragraph shall include a delineation of the geographic
3 boundaries of the proposed groundwater management area.

****NOTE: Did you intend for the council's recommendation to be discretionary? If the council concurs with the subcommittee that an area qualifies for designation as a groundwater management area, on what bases may the council decline to recommend designation to the department?

4 (f) If the department promulgates a rule designating an area as a groundwater
5 management area as authorized under par. (a), the department shall, not later than
6 180 days after the rule is promulgated, establish a target withdrawal quantity for
7 the area. *Insert 10-7-A*

****NOTE: Should this provision require that the target water quantity be established in rules?

Insert 10-7-B → *(g)* 4 GROUNDWATER ATTENTION AREA DESIGNATION. (a) The secretary may
9 designate an area as a groundwater attention area if the council recommends to the
10 secretary under par. (e) that the area be designated as a groundwater attention area.

****NOTE: Why does the secretary designate the groundwater attention area in this subsection? Typically, as under sub. (2), the authority is given to the department, rather than to the secretary. The same issues that are raised above about the discretionary authority of the council and the department relating to groundwater management areas also apply to groundwater attention areas.

11 (b) An area with a confined aquifer qualifies for designation as a groundwater
12 attention area if the council subcommittee projects that water use trends in the area
13 are likely to qualify the area for designation as a groundwater attention area under
14 sub. (2) (b) within the following 20 years.

15 (c) An area with an unconfined aquifer qualifies for designation as a
16 groundwater attention area if the council subcommittee projects that water use
17 trends in the area are likely to qualify the area for designation as a groundwater
18 management area under sub. (2) (c) within the following 20 years.

1 (d) The council subcommittee shall meet regularly to examine areas that may
2 qualify for designation as groundwater attention areas under this subsection and
3 shall forward its conclusions to the council. The council subcommittee's conclusions
4 shall include a delineation of the geographic boundaries of the areas examined.

5 (e) If the council subcommittee forwards a conclusion to the council under par.
6 (d) that an area qualifies as a groundwater attention area and if the council concurs
7 with that conclusion, the council may recommend to the department that the
8 secretary designate the area as a groundwater attention area. The council's
9 recommendation under this paragraph shall include a delineation of the geographic
10 boundaries of the proposed groundwater attention area.

11 (f) 1. If the secretary designates an area as a groundwater attention area, the
12 department shall give notice of the designation by publishing a class 1 notice under
13 ch. 985 in a newspaper likely to give notice in the area where the groundwater
14 attention area is located.

15 2. Not later than 180 days after the secretary designates an area as a
16 groundwater attention area as authorized under par. (a), the secretary shall
17 establish a target withdrawal quantity for the area.

18 **SECTION 20.** 281.344 (4s) (dm) of the statutes is amended to read:

19 281.344 (**4s**) (dm) *Requiring individual permit.* The department may require
20 a person who is making or proposes to make a withdrawal that averages 100,000
21 gallons per day or more in any 30-day period, but that does not equal at least
22 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
23 under sub. (5) if the withdrawal is located in a groundwater protection area, as
24 defined in s. 281.34 (1) (a), or a groundwater management area designated under s.
25 ~~281.34 (9)~~ 281.341 (2).

SECTION 21

SECTION 21. 281.346 (4s) (dm) of the statutes is amended to read:

281.346 (4s) (dm) *Requiring individual permit.* The department may require a person who is making or proposes to make a withdrawal that averages 100,000 gallons per day or more in any 30-day period, but that does not equal at least 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit under sub. (5) if the withdrawal is located in a groundwater protection area, as defined in s. 281.34 (1) (a), or a groundwater management area designated under s. ~~281.34 (9)~~ 281.341 (2).

SECTION 22. 281.346 (8) (cm) of the statutes is created to read:

281.346 (8) (cm) *Large withdrawals outside of Great Lakes basin.* The department shall include requirements for water conservation in any approval under s. 30.18 (2) (a), 281.34, or 281.41 for any of the following:

1. A new withdrawal in the upper Mississippi River basin that will equal at least 1,000,000 gallons per day for any 30 consecutive days.

2. A modification in a withdrawal in the upper Mississippi River basin if after that modification the withdrawal will equal at least 1,000,000 gallons per day for any 30 consecutive days.

****NOTE: Section 281.346 (4s) (a) 3. and (5) (b) 4. currently require DNR to include requirements for water conservation in general and individual permits for withdrawals from the Great Lakes Basin (applicable to all withdrawals that average 100,000 gallons or more per day in any 30-day period). Also, s. 281.35 (6) (a) 7. requires DNR to include conditions necessary to ensure the conservation of the waters in the state in approvals under s. 281.35. This applies to all permits under s. 30.18 (2) (b).

Insert 12/7
SECTION 23. 281.348 (3) (cm) of the statutes is amended to read:

281.348 (3) (cm) For the purposes of plans under par. (a), an areawide water quality planning agency designated by the governor under ch. NR 121, Wis. Adm. Code, shall delineate the proposed water supply service areas for all of the public water supply systems in the planning area for which the agency is designated. An

1 areawide water quality planning agency shall delineate proposed water supply
2 service areas that are consistent with the approved areawide water quality
3 management plan under s. 283.83 for the planning area and that permit the
4 development of plans that are approvable under par. (d). An areawide water quality
5 planning agency may also provide regional water needs assessments and other
6 regional water supply planning information. The process for conducting regional
7 activities under this subsection may be the same as the process for regional water
8 supply planning for a groundwater management area designated under s. ~~281.34 (9)~~
9 281.341 (2).

Insert
13-19
10
11
SECTION 24. Nonstatutory provisions.

11 (1) REPORT ON HIGH CAPACITY WELL APPROVAL PROCESS. No later than the first day
12 of the 13th month beginning after the effective date of this subsection, the
13 department of natural resources shall submit to the legislature, in the manner
14 provided in section 13.172 (2) of the statutes, a report on the approval process for high
15 capacity wells, including a description of the department's efforts to streamline the
16 process and a discussion of the feasibility of creating a process under which expedited
17 approval would be granted for approvals of certain high capacity wells, including the
18 creation of an Internet-based method of assisting the public to determine whether
19 a proposed well may qualify for expedited approval.

20 (END)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4094/P3insMK
MDK:.....

INSERT 2-15:

SECTION 1. 196.03 (3) (a) of the statutes is renumbered 196.03 (3) (ar) and amended to read:

196.03 (3) (ar) In the case of a public water utility ~~furnishing water~~, the commission shall include, in the determination of water rates, the cost of fluoridating the water in the area served by the public water utility ~~furnishing water~~ if the governing body of the city, village or town which owns or is served by the public water utility ~~furnishing water~~ authorizes the fluoridation of water by the public water utility ~~furnishing water~~.

History: 1981 c. 20, 342; 1983 a. 53; 1985 a. 297; 1987 a. 399; 1991 a. 294; 1993 a. 496; 1995 a. 27; 1997 a. 204.

SECTION 2. 196.03 (3) (ag) of the statutes is created to read:

196.03 (3) (ag) "Water utility" means a public utility that furnishes water.

SECTION 3. 196.03 (3) (b) 1. of the statutes is amended to read:

196.03 (3) (b) 1. A public water utility shall include the charges in the water utility bill of each customer of the public water utility in the city, village, or town.

History: 1981 c. 20, 342; 1983 a. 53; 1985 a. 297; 1987 a. 399; 1991 a. 294; 1993 a. 496; 1995 a. 27; 1997 a. 204.

SECTION 4. 196.03 (3) (c) of the statutes is created to read:

196.03 (3) (c) 1. The commission shall commence a proceeding to issue an order for encouraging water conservation by all water utilities and their customers. The order may encourage water conservation through rates, incentives, rebates, or other methods determined by the commission. The commission may impose different deadlines for compliance with the order on different classes, as determined by the commission, of water utilities, except that the commission shall impose the highest priority for compliance on water utilities located in areas designated as groundwater

1 management areas under rules promulgated by the department of natural resources
2 under s. 281.341 (2) (a).[✓]

3 2. The commission[✓] shall issue the order required under subd. 1. no later than[✓]
4 one year after the effective date of this subdivision [LRB inserts date].[✓]

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4094/P3ins
RCT:.....

Insert 6-13

SECTION 1. 281.34 (5) (ds) of the statutes is created to read:

281.34 (5) (ds) *Groundwater management plan*. If a proposed high capacity well is in a groundwater management area designated under s. 281.341 (2) (a) with a groundwater management plan under s. 281.341 (3) (e) or (f) in effect, the department may not approve the high capacity well unless it is consistent with that plan.

SECTION 2. 281.34 (7) of the statutes is renumbered 281.34 (7) (a) and amended to read:

281.34 (7) (a) The approval of a high capacity well issued under this section or under s. 281.17 (1), 2001 stats., remains in effect unless the, subject to pars. (b) and (c).

(b) The department modifies or rescinds the may modify or rescind an approval under this section or under s. 281.17 (1), 2001 stats., because the high capacity well or the use of the high capacity well is not in conformance with standards or conditions applicable to the approval of the high capacity well.

History: 2003 a. 310; 2007 a. 227; 2009 a. 28.

SECTION 3. 281.34 (7) (c) of the statutes is created to read:

281.34 (7) (c) 1. After a groundwater management plan under s. 281.341 (3) (e) or (f) takes effect for a groundwater management area designated under s. 281.341 (2) (a), the department shall review approvals for high capacity wells in the groundwater management area that were issued under this section or under s. 281.17 (1), 2001 stats., before the plan took effect.

2. After conducting the review under subd. 1. for a groundwater management area designated under s. 281.341 (2) (a), the department may periodically review the approvals under this section or under s. 281.17 (1), 2001 stats., for high capacity wells in the groundwater management area.

3. The department may modify the approval under this section or under s. 281.17 (1), 2001 stats., of a high capacity well, after a review under subd. 1. or 2., as necessary to ensure that the high capacity well is consistent with the groundwater management plan for the groundwater management area in which the high capacity well is located.

****NOTE: I'm not certain what should be mandatory and what should be optional for DNR in this paragraph (par. (c)).

Insert 7-11

(bm) "Chief executive" means the county executive or, if a county does not have a county executive, the chairperson of the county board of supervisors.

Insert 10-7-A

no ff and a target date for achieving the target withdrawal quantity

Insert 10-7-B

(3) GROUNDWATER MANAGEMENT PLANNING FOR GROUNDWATER MANAGEMENT AREA.

(a) 1. Upon the designation under sub. (2) (a) of a groundwater management area that is contained within one county, the chief executive of the county shall appoint a groundwater management council for the groundwater management area, except that if the chief executive of the county has not appointed a council before the 180th day after the effective date of the rule designating the groundwater management area, the department shall appoint the groundwater management council.

2. Upon the designation under sub. (2) (a) of a groundwater management area that includes all or part of more than one county, the counties shall negotiate an agreement that provides for the appointment of a groundwater management council for the groundwater management area, including the size and method of appointment of members of the council, and shall appoint the council as provided in the agreement, except that if the counties do not enter into an agreement and appoint a council before the 180th day after the effective date of the rule designating the groundwater management area, the department shall appoint a groundwater management council.

(b) A groundwater management council shall develop a groundwater management plan for the groundwater management area that is protective of surface water and groundwater, is designed to achieve the target withdrawal quantity established under sub. (2) (f) by the target date established under sub. (2) (f), and includes all of the following:

****NOTE: This would apply to the current groundwater management areas (if they are redesignated) as well as to new ones. Is it possible to achieve a withdrawal quantity in the two current groundwater management areas that meets the definition of "target withdrawal quantity"?

1. Measurable goals.
2. Reporting requirements, including requirements to report progress toward achieving the target withdrawal quantity.

****NOTE: Who should be required to report and to whom?

3. Opportunities for public participation.

****NOTE: In what must the public have opportunities to participate? If the intent is that the public have opportunities to participate in developing the plan, this requirement will need to be placed elsewhere.

4. Water conservation measures.

(c) A groundwater management council may contract with another entity, including a regional planning commission, for assistance in preparing a groundwater management plan.

(d) 1. A groundwater management council for a groundwater management area that is contained within one county shall submit the groundwater management plan developed under par. (b) to the county board for approval. If the plan is approved by the county board, the groundwater management council shall submit the plan to the department.

2. A groundwater management council for a groundwater management area that includes all or part of more than one county, shall submit the groundwater management plan developed under par. (b) to each county board for approval. If the plan is approved by each county board, the groundwater management council shall submit the plan to the department.

(e) The department shall review and approve or disapprove a groundwater management plan submitted under par. (d). The department may approve the groundwater management plan only if the plan complies with par. (b).

(f) If a groundwater management plan is not submitted under par. (e) for a groundwater management area before the first day of the 37th month beginning after the effective date of the rule designating the groundwater management area, the department shall develop a groundwater management plan for the groundwater management area that is designed to achieve the target withdrawal quantity established under sub. (2) (f) by the target date established under sub. (2) (f).

Insert 12-17

24

SECTION 4. 281.348(8) (cs) of the statutes is created to read:

1

281.348 (8) (cs) *Withdrawals in groundwater management areas.* 1. The department shall include requirements for water conservation in any approval under s. 30.18 (2) (a) or 281.41 to which par. (cm) does not apply if the withdrawal is in a groundwater management area designated under s. 281.341 (2) (a) for which a groundwater management plan under s. 281.341 (3) is in effect.

2. In any approval under this section or s. 30.18 (2) or 281.41 for a withdrawal in a groundwater management area designated under s. 281.341 (2) (a) for which a groundwater management plan under s. 281.341 (3) is in effect, the department shall ensure that the requirements for water conservation included in the approval are consistent with the groundwater management plan.

***NOTE: There are water conservation requirements in a number of different statutes and it is not clear how to deal with that, in particular to cover all of the withdrawals that are intended to be covered while minimizing redundancy. I did not reference s. 281.34 in this paragraph because the draft already requires approvals under that section to be consistent with groundwater management plans.

SECTION 5. 281.348 (3) (a) 3. and 4. of the statutes are created to read:

281.348 (3) (a) 3. A person operating a public water supply system that serves a population of 10,000 or more and that withdraws water from a groundwater management area designated under s. 281.341 (2) (a) shall have an approved plan under this section no later than the first day of the 49th month beginning after the effective date of the rule designating the groundwater management area.

4. If a person operating a public water supply system described in subd. 3. has an approved plan under this section before the department approves or develops a groundwater management plan under s. 281.341 (3) (e) or (f) for the groundwater management area and the approved plan under this section is not consistent with the groundwater management plan, the person shall submit a revised plan under

1 this section no later than the first day of the 49th month beginning after the effective
2 date of the rule designating the groundwater management area.

****NOTE: The instructions did not cover the situation in which a public water
supply system in a groundwater management area already had a water supply plan. Is
subd. 4. wanted?

3 **SECTION 6.** 281.348 (3) (c) 8. of the statutes is amended to read:

4 281.348 (3) (c) 8. An analysis of how the plan supports and is consistent with
5 any applicable comprehensive plans, as defined in s. 66.1001 (1) (a), and applicable
6 approved areawide water quality management plans under s. 283.83, and applicable
7 groundwater management plans approved or developed by the department under s.
8 281.341 (3) (e) or (f).

History: 2007 a. 227; 2009 a. 28.

9 **Insert 13-9**

10 **SECTION 7.** 281.348 (3) (d) 4m. of the statutes is created to read:

11 281.348 (3) (d) 4m. The plan is consistent with any applicable groundwater
12 management plans approved or developed by the department under s. 281.341 (3) (e)
13 or (f).

Tradewell, Becky

From: Bier, Beth
Sent: Thursday, February 18, 2010 4:29 PM
To: Tradewell, Becky
Cc: Stolzenberg, John; Letzing, Rachel; Maycroft, John
Subject: Changes to groundwater draft

Attachments: Changes to LRB 4094.doc

Attached is a document with changes to the P3, answers to the notes and some questions of ours.



Changes to LRB
4094.doc (41 KB...

Beth Bier
Office of Senator Mark Miller
PO Box 7882
Madison, WI 53707

Phone: (608) 266-9170
Email: Beth.Bier@legis.wisconsin.gov

Changes to LRB 4094/P3

1. Add “withdrawals” to the changes DNR can make in a GMA, not just high-cap well approvals
2. p. 2, line 5-6 – why is appropriation repealed?
3. p.2, line 16 – change to “expertise in the area of groundwater *science* and management.” (strike after management)
4. p.2, line 20 – why are these changes here?
5. p. 3, section 9 – add language directing the PSC to summarize and evaluate the water conservation programs that the Commission has already implemented, including incentive programs and rate structures.
6. p.4, line 8 – new language on definition of a spring – does this seem necessary?
“spring means an area of concentrated groundwater discharge occurring at the surface of the land. Spring shall include a pond that has upward flowing groundwater as its primary source of water and that has no discernable surface water inlet but has a defined surface outlet with a natural flow of at least 1 cfs (or .25). Spring shall include areas of visible diffuse groundwater seepage when the seepage becomes concentrated in a defined channel within 1200 ft. of the diffuse areas of seepage and the flow with the channel is at least 1 cfs. Spring does not include the following wells as defined in s. NR 812.07(46).
7. p.4, line 13 – does it need to be clarified that it does not include a municipal system that provides water to a water bottling facility? And does this include soda or beer?
8. p. 4, line 23, Section 16 – DNR wants specifics in rule on what petition contain for reasonable burden of proof – is this necessary or implied?
9. p. 5 – note after line 2 – (1) Look at Ch. 30 for public noticing requirement – DNR will post online, the applicant should be required to do local noticing. We do not want this to be overly prescriptive – any suggestions? (2) there should be an exception for wells needed in the case of an emergency – can DNR clarify this by rule?
10. p. 8, line 15 – change to “shall”
11. p.9, note at top of page – okay if a delayed effective date is needed.
12. p. 9, note after line 5 – NO

13. p.10, line 4 – where did “critical” come from?
14. p. 10, note after line 12 – yes discretionary, no need to specify in draft, can do in rules
15. p. 10, line 18 – DNR working on new language with Ken
16. p. 10, line 22 – strike language after “10 year period”
17. p. 11, Line 1-3, remove #4 – potentially confusing because standards don’t apply to wells other than public – there won’t be an application of just 4
18. p. 11, line 4 – add “that causes a significant adverse environmental impact” to (c)
19. p. 11, line 10 – strike language after “10 year period”
20. p.11, line 15 – eliminate 4
21. p. 12, line 1 – add “and preliminary target withdrawal quantity”
22. p.12, line 8 – change may to “shall”
23. p. 12, line 11 – add “and preliminary target withdrawal quantity”
24. p. 12, note after line 15 - NO
25. p. 13, note after line 16 - YES
26. p. 13, note after line 19 – Council report to DNR
27. p. 13, , note after line 20 – need to add public input before plan is formulated and after
28. p.14, add 5 – and others promulgated by DNR in rule (use compact language)
29. p. 15 – change to “Department” from “Secretary” (and throughout draft)
30. p.15, line 15 & 21 – add “target withdrawal quantity”
31. p. 15, line 18 – change may to “shall”
32. p. 16, line 9 – why was that amended? Doesn’t it go away with the Compact?
33. Sect. 28 extends permitting to the Mississippi Basin – that is not the intent. Does it do this?

34. p. 18, note after line 13 – YES

35. Add section on graywater:

145.133 of the statutes is created to read:

145.133 Graywater systems. (1) In this section:

(a) “Graywater” means wastewater generated from the use of a clothes washer, sink, shower, or bathtub.

(b) “Graywater system” means a system for the collection and reuse of graywater.

(c) “Rainwater system” means a system for the collection and reuse of rainwater generated from building roofs.

(2) The department shall promulgate rules that establish standards for the installation of graywater and rainwater systems. The standards shall authorize the reuse of graywater and rainwater within the building, or on the property surrounding the building, from which the graywater or rainwater was generated.

Tradewell, Becky

From: Bier, Beth
Sent: Friday, February 19, 2010 3:19 PM
To: Maycroft, John; Tradewell, Becky; Kite, Robin
Cc: Stolzenberg, John; Letzing, Rachel
Subject: RE: definition of target withdrawal quantity

Becky and Robin,

I'm sorry to do this, but I have 1 more clarification to make. If an area is designated a GMA, we would like the DNR to have the authority to look at new applications for a high cap well for adverse environmental impacts (anywhere, not just GPA) before a plan is in place. We do not want them to be able to open up existing approvals until after there is a plan, but new ones should be able to have that stricter look. Let me know if you have questions.

Thanks,
Beth

From: Maycroft, John
Sent: Friday, February 19, 2010 2:29 PM
To: Tradewell, Becky; Kite, Robin
Cc: Bier, Beth; Stolzenberg, John; Letzing, Rachel
Subject: definition of target withdrawal quantity

Becky and Robin,

Here are two versions of a new definition of "Target withdrawal quantity" on page 10

(g) "Target withdrawal quantity" means the maximum amount of water that may be withdrawn from a hydrologic system that will, over time, bring a delineated area supplied by the system below the threshold criteria for designation as a groundwater management area or groundwater attention area.

OR

"the withdrawal limit sufficient to bring the area below the threshold for designation as a GMA/GAA upon completion of the Groundwater Management/Attention plan."

The idea is that, since GMAs and GAAs are designated by the criteria on p. 10-11, the budget should be designed to bring the area below those thresholds.

Thanks so much for your help,

John

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

2/23/10 Meeting with Beth Bier, John Maycraft, John Stolzenberg
Rachel Letzing

New change requested - page 10, line 21 - change reference
from "water level" to "groundwater potentiometric surface"
for consistency

Regarding the instructions dated 2/18/10:

^{MOD} Item 5 - use due date for report of 1/1/2011 and require submission
to the appropriate standing committee of the legislature

#6 - Don't do anything for now.

#9. Have DNR post notice online. Authorize emergency exemption

#11. 2 year delayed effective date

#15. Go ahead with redraft without "new language"

#18. Add the concept only to (c) 1. - the baseflow has declined
and that has resulted in significant adverse environmental impact

#26. County report to DNR

#35. Graywater - delete "and reuse" Also "generated" as it
relates to ~~renewable~~ water.

Changes to LRB 4094/P3

RCT annotation -
meeting 2/22/2010
Greenmy answers
John Maynard
Beth Bar
John Stedman
Rachel
Leberg

1. Add "withdrawals" to the changes DNR can make in a GMA, not just high-cap well approvals *Hold for now*
2. p. 2, line 5-6 – why is appropriation repealed? *It isn't. Reflects repeal of sub.(9).*
3. p.2, line 16 – change to "expertise in the area of groundwater science and management." (strike after management) *OK*
4. p.2, line 20 – why are these changes here? *Because of new definition created in sub.(9)?*
5. p. 3, section 9 – add language directing the PSC to summarize and evaluate the water conservation programs that the Commission has already implemented, including incentive programs and rate structures. *OK*
6. p.4, line 8 – new language on definition of a spring – does this seem necessary? ~~NO~~
"spring means an area of concentrated groundwater discharge occurring at the surface of the land. Spring shall include a pond that has upward flowing groundwater as its primary source of water and that has no discernable surface water inlet but has a defined surface outlet with a natural flow of at least 1 cfs (or .25). Spring shall include areas of visible diffuse groundwater seepage when the seepage becomes concentrated in a defined channel within 1200 ft. of the diffuse areas of seepage and the flow with the channel is at least 1 cfs. Spring does not include the following wells as defined in s. NR 812.07(46).
7. p.4, line 13 – does it need to be clarified that it does not include a municipal system that provides water to a water bottling facility? And does this include soda or beer? *No*
8. p. 4, line 23, Section 16 – DNR wants specifics in rule on what petition contain for reasonable burden of proof – is this necessary or implied? *They can specify by rule what info. must be provided*
9. p. 5 – note after line 2 – (1) Look at Ch. 30 for public noticing requirement – DNR will post online, the applicant should be required to do local noticing. We do not want this to be overly prescriptive – any suggestions? (2) there should be an exception for wells needed in the case of an emergency – can DNR clarify this by rule?
10. p. 8, line 15 – change to "shall" *OK*
11. p.9, note at top of page – okay if a delayed effective date is needed. *2 years to get rule promulgated.*
12. p. 9, note after line 5 – NO *OK*

13. p.10, line 4 – where did “critical” come from? *From instructions*
14. p. 10, note after line 12 – yes discretionary, no need to specify in draft, can do in rules *OK*
15. p. 10, line 18 – DNR working on new language with Ken *OK*
16. p. 10, line 22 – strike language after “10 year period” *OK*
17. p. 11, Line 1-3, remove #4 – potentially confusing because standards don’t apply to wells other than public – there won’t be an application of just 4 *OK*
18. p. 11, line 4 – add “that causes a significant adverse environmental impact” to (c) *Test at end of subd. I,*
19. p. 11, line 10 – strike language after “10 year period” *OK*
20. p.11, line 15 – eliminate 4 *OK*
21. p. 12, line 1 – add “and preliminary target withdrawal quantity” *OK*
22. p.12, line 8 – change may to “shall” *OK*
23. p. 12, line 11 – add “and preliminary target withdrawal quantity” *OK*
24. p. 12, note after line 15 - NO *OK*
25. p. 13, note after line 16 - YES *OK*
26. p. 13, note after line 19 – ~~Council~~ *County* report to DNR
27. p. 13, , note after line 20 – need to add public input before plan is formulated and after *OK*
28. p.14, add 5 – and others promulgated by DNR in rule (use compact language) *Other provisions specified by DNR by rule*
29. p. 15 – change to “Department” from “Secretary” (and throughout draft) *OK*
30. p.15, line 15 & 21 – add *preliminary* target withdrawal quantity” *OK*
31. p. 15, line 18 – change may to “shall” *OK*
32. p. 16, line 9 – why was that amended? Doesn’t it go away with the Compact? *The statute is not repealed and cross-ref. must be changed*
33. Sect. 28 extends permitting to the Mississippi Basin – that is not the intent. Does it do this? *No*

34. p. 18, note after line 13 – YES *OK*

35. Add section on graywater:

145.133 of the statutes is created to read:

145.133 Graywater systems. (1) In this section:

(a) "Graywater" means wastewater generated from the use of a clothes washer, sink, shower, or bathtub.

(b) "Graywater system" means a system for the collection and reuse of graywater.

(c) "Rainwater system" means a system for the collection and reuse of rainwater generated from building roofs.

(2) The department shall promulgate rules that establish standards for the installation of graywater and rainwater systems. The standards shall authorize the reuse of graywater and rainwater within the building, or on the property surrounding the building, from which the graywater or rainwater was generated.

*OK-except
John S.
suggests
not only
"reuse"
for rainwater
and also
not "generated"*

Kite, Robin

From: Bier, Beth
Sent: Wednesday, February 24, 2010 10:51 AM
To: Kite, Robin
Cc: Stolzenberg, John; Letzing, Rachel; Maycroft, John; Tradewell, Becky
Subject: RE: Confined aquifer question

This is from Mark:

Eliminate the modifier "static." The definition of potentiometric surface in the statutes means "static." "Pumping level" means the steady state water level in the well when the pump is operating. The terms are congruent. DNR wanted to be able to use the dynamic measurement since it is more frequently available than the static level which can only be achieved via modeling for wells that are essentially continuously operating.

Sen. Mark Miller

(608) 266-9170

From: Kite, Robin
Sent: Wednesday, February 24, 2010 10:11 AM
To: Bier, Beth
Cc: Stolzenberg, John; Letzing, Rachel; Maycroft, John; Tradewell, Becky
Subject: RE: Confined aquifer question

Beth:

With regard to this new language, I will need more information before I can incorporate the language into the draft:

1. What does the term "static" mean in this context? Also, the term is not used elsewhere in the draft to modify the phrase "groundwater potentiometric surface". Is that intended?
2. What does "pumping level" mean? How is it different from potentiometric surface?
3. Most importantly, how does this new language change the criteria already established in the draft? Is the new language for this criterion broader than the previous language? If so, in what way is it more expansive? It is really important that I have an explanation of this new language so that I understand your intent.

Give me a call if you think it would be easier to discuss these issues by phone.

Thanks.

Robin

From: Bier, Beth
Sent: Wednesday, February 24, 2010 9:07 AM
To: Tradewell, Becky; Kite, Robin
Cc: Stolzenberg, John; Letzing, Rachel; Maycroft, John
Subject: FW: Confined aquifer question

Here is the new language discussed by Ken Bradbury and the DNR. Thanks!

02/24/2010

From: Ken Bradbury [mailto:krbradbu@wisc.edu]
Sent: Wednesday, February 24, 2010 8:44 AM
To: Miller, Mark
Cc: 'Michael Fienen'; Bier, Beth; Ebersberger, Eric K - DNR
Subject: RE: Confined aquifer question

Mark:

I discussed the measurement issue with Eric Ebersberger at DNR, and he shared this draft language with me:

RE: LRB—4094/P3 Section 26 page 10 lines 18 to 20. [The GMA and GAA designation criteria in the proposed §281.341 (2)(b) 2.]:

The static groundwater potentiometric surface of the confined aquifer has been reduced to within 20 feet above the top of the aquitard bounding the upper surface of the confined aquifer or the majority of high capacity wells that pump water from the confined aquifer have a pumping level that is below the base of the overlying aquitard.
[e1]

I am comfortable with this language, which lays out a dual approach.

Ken

Ken Bradbury
Hydrogeologist/Professor
Wisconsin Geological and Natural History Survey
University of Wisconsin-Extension
krbradbu@wisc.edu
608-263-7921
http://www.uwex.edu/wgnhs/staff_krb.htm

We feel this is a more stringent criterion.